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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/501,796	02/08/2000	Norm D. Schlaegel	A-68724/AJT	4387

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EXAMINER

DABNEY, PHYLESHA LARVINIA

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 12/13/2001

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/501,796

Applicant(s)

SCHLAEGEL ET AL

Examiner

Phylesha Dabney

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 08 February 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 08 February 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

This office action is in response to the application filed on 8 February 2000 in which claims 1-13 are pending.

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second sound conduction tube disclosed in claim 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 15 is objected to because of the following informalities: Since the electrical connector shown in the drawings is not inside the electrical cable, the word "therein" does not seem to apply. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to teach a second sound conduction tube. The Examiner has assumed that the Applicant is referring to connector (16) for the rejection of claim 2 presented below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(f) he did not himself invent the subject matter sought to be patented.

4. Claims 1-13 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. The Examiner believes that the inventor did not invent himself the portion of the electro-acoustic system pertaining to the earmold; sound-conduction tubing; connector; and conduction bore, because in U.S. Patent No. 4,381,830 and U.S. Patent No. 5,753,870 and U.S. Patent No. 5,975,235, Chester Jelonek was listed as having partial inventorship.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over G.W. French (U.S. Patent No. 2,573,132), in view of Antle (U.S. Patent No. 4,499,593).

5. Regarding claims 1 and 15, French '132 discloses an electro-acoustic system comprising: a fitted earmold (1) having a sound-conduction bore (7); a sound-conduction tube (2, 8) having a passage; and a speaker (14). French '132 inherently teaches an electrical cable (14'), since French '132 (col. 1 lines 5-15) is an improvement over French (U.S. Patent No. 2,545,731) and French '731 teaches a cord (2). French '132 does not teach an electrical plug connected to the other end of the electrical cable for electrical connection to an electrical sound-generating member. Antle teaches a type of electrical plug (44, 46, 48) attached to an electrical cable (38) for insertion into a sound producing system (col. 4 lines 40-45). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to attach the electrical plug of Antle to the electrical cable of French '132 for insertion into a sound producing system.

Regarding claim 2, French '132 teaches the speaker coupled to the sound conduction tube (8) by a sound conduction tube (2).

Regarding claim 3, French '132 teaches a connector (2) having an inner end and an outer end.

Regarding claim 4, as shown in fig. 2, French '132 teaches the bore (7) having an entry section and exit section.

Regarding claim 14, Neither French '132 nor French (U.S. Patent No. 2,545,731) teach the specifics of the electrical cable used; however, it is extremely well-known in the art to use coiled electrical cables because they are less cumbersome. In addition, Antle teaches a type of electrical cable having a coiled section (38) for use with a sound producing system. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a coiled cable such as the one disclosed by Antle in the invention of French '132 for transferring electrical signals.

Claims 5-10, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over G.W. French (U.S. Patent No. 2,573,132), in view of Antle (U.S. Patent No. 4,499,593), and in further view of Schlaegel et al (U.S. Patent No. 5,753,870).

6. Regarding claim 5, the combination of French '132 and Antle does not teach the specific structure of the earmold or connecting tube. Schlaegel teaches a specific structure for an earmold including a seating member (12a, 12b) as a means for securing a specific type of connecting tube (18). Since French '132 does not suggest or exclude any type of earmold structure, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the earmold structure of Schlaegel including a seating member could have been used in the combination of French '132 and Antle as a means of securing the specific type of connecting tube presented by Schlaegel inside the earmold.

Regarding claims 6-7, Schlaegel teaches the specific type of connector (18) including an elbow configuration (fig. 3) and includes a tubing-receiving section (24), a latching section (22, 32, 34), and a passage (30).

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Regarding claim 8, the combination of French '132 and Antle does not specifically teach the diameter of the conduction tubing, passage, or exit section of the bore as being the same. Schlaegel teaches maintaining the diameter of the conduction tubing, passage, and exit section the same (col. 2 lines 56-60 and col. 3 lines 10-12). Since the combination of French '132 and Antle does not suggest or exclude any diameter for the electro-acoustic system, it would have been obvious to one of ordinary skill in the art at the time the invention was made that keeping the diameter of the tubing, passage, and exit section the same as taught by Schlaegel could have been used in the combination of French '132 and Antle as a means of acoustic characteristics of the system.

Regarding claim 9, Schlaegel teaches a filter (40) disposed in the tubing receiving section (24).

Regarding claim 10, Schlaegel teaches the tubing receiving section (24) having a shoulder (28).

Regarding claim 12, Schlaegel teaches the latching section (22, 32, 34) has an annular recess and an annular barb (32).

Regarding claim 13, Schlaegel teaches a space (12b) provided in the entry section, and a nubbin (22) is disposed within the space.

Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over G.W. French (U.S. Patent No. 2,573,132), in view of Antle (U.S. Patent No. 4,499,593), and in further view of Major (U.S. Patent No. 5,488,205).

7. Regarding claim 5, the combination of French '132 and Antle does not teach the specific structure of the earmold or connecting tube. Major teaches a specific structure for an earmold including a seating member (24) as a means for securing a specific type of connecting tube (12). Since the combination of French '132 and Antle does not suggest or exclude any type of earmold structure, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the earmold structure of Major including a seating member could have been used in the combination of French '132 and Antle as a means of securing the specific type of connecting tube presented by Major inside the earmold.

Regarding claim 11, as shown in figs. 1-4, Major teaches the seating member (24) having an annular section (figures 1-4, and col. 3 lines 50-51) and an annular shoulder (27).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha Dabney whose telephone number is 703-306-5415. The examiner can normally be reached on Mondays, Tuesday, Thursdays, and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

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Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703) 872-9314, for formal communications intended for entry and for informal or draft communications, please label "Proposed" or "Draft" when submitting an informal amendment.

* (703) 306-0377, for customer service questions.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

PLD



December 3, 2001



**SINH TRAN
PRIMARY EXAMINER**